



October 19, 2010

Via regulations.gov, email, and Federal Express

Mr. Jon M. Capacasa, Director
Water Protection Division (3WP00)
US EPA Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

**Re: Docket ID No. EPA-R03-OW-2010-0736
Draft Chesapeake Bay TMDL – Request for Comment Time Extension**

Dear Mr. Capacasa:

My firm has been retained by a number of individual sources to assist them in reviewing, evaluating, and preparing comments on the Chesapeake Bay Total Maximum Daily Load (TMDL) report published on September 24, 2010 and notice of availability published in the Federal Register on September 22, 2010 (75 FR 57776). Currently, all comments must be received by the Environmental Protection Agency (EPA) no later than November 8, 2010, thereby providing only a 45-(calendar) day comment period.

I am writing to request that the comment period be extended for a minimum of 120 days. An extension to the comment period is necessary due to a number of factors described below. While EPA believes that certain portions of the TMDL are based on “state-of-the-art modeling tools, extensive monitoring data, [and] peer-reviewed science”, all of the tools have not been properly reviewed as stated in the draft TMDL dated September 27, 2010 (p. ii). We also do not believe that the TMDL and the Watershed Implementation Plans (WIPs) were developed with “close interaction with state partners”.

EPA has rushed the development of this TMDL and has applied tools that were originally developed for continued implementation of a voluntary, cooperative program. We do not believe that these tools have been sufficiently tested and verified for application in a TMDL (particularly the Scenario Builder) and for subsequent implementation through the NPDES program, particularly for stormwater, combined sewer overflows, and concentrated animal feeding operations (CAFOs). If implementation of the TMDL and the WIPs is going to be successful, it is important that States and affected stakeholders be given the opportunity to thoughtfully review and comment on the TMDL, the WIPs, and the scenario builder and other underlying tools (in particular the Watershed Model). Given that the draft TMDL is “the largest ever developed by EPA”, it seems only reasonable that EPA grant a review period of a minimum of 120 calendar days, for the reasons described below.

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First, the TMDL is very complicated and requires review of not only the TMDL report, but numerous supporting documents. The TMDL documents were provided piece meal on EPA's website (www.regulations.gov) and contain numerous typographic errors and missing references. Even EPA did not have sufficient time to ensure that these errors were addressed prior to the public comment period.

Second, the massive size of the document makes review in a 45-day timeframe impossible. The current version of the report, including the Appendices, is more than 2,000 pages. This does not include the modeling documentation or the documentation to support the Scenario Builder, which forms the foundation of the distribution of the "pollution diet" across the multiple sources.

Third, complete review of the TMDL requires review of the State-developed WIPs. The WIPs and their role in the TMDL are not at all clear. Generally, "implementation" plans are written after a TMDL is finalized. This is so all components of the TMDL are considered and can be implemented. In this TMDL process, EPA required that the states write a significant amount of the implementation plans before the draft TMDL was publicly available. After the WIPs were released, EPA indicated many of them were significantly flawed. If, as EPA has asserted, many of the WIPs are significantly flawed, this raises serious questions about the actual status of the WIPs and how they will work in relation to the TMDL. This uncertainty has a significant impact on the amount of time necessary to review both the TMDL and the WIPs.

Finally, we believe that it is necessary to test some of the newer tools (that do not appear to have been peer reviewed) that EPA used to develop the TMDL. Therefore, in addition to our request for an extension, we are also requesting a copy of the Scenario Builder model so that it may be tested. We also request all documentation of any and all peer reviews that were conducted to check the Scenario Builder model.

We believe this request for a minimum 120-day review period is more than reasonable. As noted in numerous EPA public forums, this is the largest TMDL that has ever been done. The only other TMDL that was nearly as large and complicated as the Chesapeake Bay TMDL was the mercury TMDL for New England. In that TMDL, EPA was involved as outlined by the Clean Water Act to review and approve or disapprove the TMDL. The TMDL covered all the New England States and part of New York. Each state issued an individual TMDL and provided a 59-day comment period. The TMDL report was only a little over 100 pages long. Based on past practice of the Agency and other regulatory agencies, we cannot see how a 45-day comment period is appropriate. We recognize that EPA has entered into a consent agreement regarding the Bay; however, we do not feel this should preclude EPA from providing the public with an appropriate notice and comment opportunity.

We would appreciate your review of this request and ask that you notify us of your decision within the next 5 business days.

October 19, 2010

Sincerely,
LimnoTech

A handwritten signature in blue ink, appearing to read "Adrienne Nemura".

Adrienne Nemura, P.E., BCEE
Vice President

cc: Shawn Garvin, USEPA Region3
Jennifer Sincock, USEPA Region 3
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